

INDIANAPOLIS DEPARTMENT OF WATERWORKS
BOARD OF DIRECTORS

MINUTES OF THE MEETING OF
MONDAY, APRIL 22, 2002

The meeting was called to order by Chairperson John Mutz, at 5:04 p.m. in Room 107 of the City-County Building, 200 East Washington Street, Indianapolis, Indiana.

The following Board members were in attendance at the meeting: Jack Bayt, Carlton Curry, Barbara Howard, S. Michael Hudson, Alan Kimbell, John Mutz, and Samuel L. Odle.

I. Opening Remarks of the Chairperson and Approval of Board Minutes

Chairperson Mutz greeted the other Indianapolis Department of Waterworks (the "Department") Board members, and summarized the items on the agenda with reference to the closing of the City's purchase of the waterworks business of the IWC Resources Corporation (the "IWCR"), scheduled for April 30, 2002 (the "Closing").

Chairperson Mutz then introduced and welcomed James Buckler of U. S. Filter Operating Services, Inc. (the "U. S. Filter"). Mr. Buckler addressed comments to the Board and answered questions of Board members regarding U. S. Filter's preparations to provide services under the public-private agreement with the City, including the issues of U. S. Filter's relationship with current Indianapolis Water Company employees, and the taste of the water and the application of algicides.

Chairperson Mutz then noted the unique combination of public/private, for profit/not-for-profit, and bipartisan cooperation which marks the transition of local water services from the IWCR to the City and the City's operating agreement with U. S. Filter, and further noted the importance of the Board relying on the expertise of consultants.

Chairperson Mutz requested that the Board members review the Board Minutes from the March 5, 2002, meeting of the Board of Directors of the Indianapolis Department of Waterworks. Mr. Curry moved that the Board Minutes be approved. Ms. Howard seconded the motion, and a vote was taken. The Board unanimously approved the Board Minutes. Chairperson Mutz signed the Official Minutes from the March 5, 2002 Board meeting.

II. Adoption of Plan to Exclude Certain Sewer Assets and Interests from the Waterworks

Chairperson Mutz called on attorney Regina M. Sharrow of the law firm of SOMMER & BARNARD to present an explanation of the reasons for the City's plans to exclude certain assets and interests from the Department of Waterworks, including the following: first, Irishman's Run Acquisition Corp. will be transferred to the City on Closing, and contemporaneously with or within a week thereafter will be transferred from the City to the Town of Zionsville, Indiana; and

second, the City would consent to the sale of IWCR's interest in Western Hancock Utilities, LLC to a third party prior to Closing. Corporation Counsel A. Scott Chinn also advised the Board as to the legal basis of these actions, noting the Indianapolis Mayor's recusal and delegation of authority to the Board regarding Western Hancock Utilities, LLC. The Board also heard from Robert J. Clifford of the Indianapolis Local Public Improvement Bond Bank, and attorney Janet Madden Charles.

Vice-Chairperson Odle moved that Resolution No. 14, 2002, be approved and adopted by the Board. Mr. Curry seconded the motion, and a vote was taken. The Board unanimously approved and adopted the "Resolution Approving an Amendment to the Real Estate Purchase Agreement By and Between the Department of Waterworks and the Town of Zionsville, and Ratifying Such Agreement."

Mr. Kimbell moved that Resolution No. 15, 2002, be approved and adopted by the Board. Mr. Curry seconded the motion, and a vote was taken. The Board unanimously approved and adopted the "Resolution Regarding Western Hancock Utilities, LLC."

III. Ratification of Final Public-Private Agreement with U. S. Filter Operating Services, Inc.

Chairperson Mutz called upon A. Scott Chinn to note the process under which the City would enter into a public-private agreement with U. S. Filter, including tentative approval by the Board on March 5, 2002, City-County Council approval on March 18, 2002, and execution by Chairperson Mutz on March 21, 2002. Mr. Chinn explained that the proposed Resolution would ratify the Chairperson's execution of the Agreement, and Regina M. Sharrow advised the Board of minor changes to the Agreement prior to its execution.

Mr. Curry moved that Resolution No. 16, 2002, be approved and adopted by the Board. Mr. Bayt seconded the motion, and a vote was taken. The Board unanimously approved and adopted the "Resolution Ratifying the Public-Private Agreement for Management of the Indianapolis Waterworks."

IV. Approval of Intergovernmental Agreements

Chairperson Mutz called upon Janet Madden Charles to explain the need to affirm and ratify the Chairperson's previous execution of twenty-two (22) intergovernmental agreements with certain counties and municipalities. Ms. Charles noted that the language of the agreements was consistent, and explained the minor differences in the language of the agreements with Hamilton County and with Fishers, noting the reasons therefor. A. Scott Chinn advised the Board that the resolution would also empower the Chairperson to execute intergovernmental agreements containing substantially identical provisions with other counties and municipalities.

Mr. Curry moved that Resolution No. 17, 2002, be approved and adopted by the Board. Mr. Bayt seconded the motion, and a vote was taken. The Board unanimously approved and adopted the "Resolution Affirming and Ratifying the Execution of Certain Intergovernmental Agreements."

V. Update on Regulatory Proceedings and Bond Issuance

Chairperson Mutz called upon attorney Michael C. Terrell of the law firm of SOMMER & BARNARD for an update on the status of regulatory proceedings regarding the City's purchase of the waterworks business of IWCR. Mr. Terrell advised the Board that on March 28, 2002, the Indiana Utility Regulatory Commission entered its final order approving the acquisition, and that the period during which such final order could be appealed would expire on April 30, 2002. Mr. Terrell further stated that there had been no appeals to date, and there was no reason to expect an appeal.

Chairperson Mutz then called upon Robert J. Clifford for an update on the bond issuance. Mr. Clifford advised the Board that the bonds went to market on Tuesday, April 16, 2002, and were very well received by the market, all being sold that same day. The Board also heard from Mr. Jim Merten, Vice-Chairman of City Securities Corporation, on this matter. Chairperson Mutz offered his thanks to these persons for a job well done.

VI. Re-adoption of Bond Resolution

Chairperson Mutz called upon attorney Brenda S. Horn of the law firm of ICE MILLER DONADIO & RYAN to present Resolution No. 18, 2002, and to explain the reasons for a readoption of the bond resolution. Ms. Horn advised the Board of the slight changes in this Resolution from Resolution No. 12, 2002, passed by the Board on March 5, 2002, and the reasons for those changes.

Mr. Kimbell moved that Resolution No. 18, 2002, be approved and adopted by the Board. Vice-chairperson Odle seconded the motion, and a vote was taken. Mr. Curry abstained from the vote. The Board approved and adopted, with no dissenting vote, the "Resolution Concerning the Department of Waterworks of the City of Indianapolis, Indiana; Authorizing the Issuance by the Department of its "City of Indianapolis, Indiana, Waterworks District Net Revenue Bonds, Series 2002A," and its "City of Indianapolis, Indiana, Waterworks District Net Revenue (Taxable) Bonds, Series 2002B," for the Purpose of Financing Wholly or in Part the Cost of Acquiring Waterworks; Authorizing the Acceptance of the Bond Purchase Agreement; Providing the Forms, Terms, and Conditions of the Bonds and the Security Therefor; Providing for the Collection and Disposition of Revenues Derived from the Operation of the Department's Waterworks; Pledging Net Revenues and Certain Other Funds to the Payment of the Bonds; Providing Other Covenants, Agreements, Details and Other Matters Relating Thereto; and Providing the Effective Date Thereof."

VII. Approval of Continuing Disclosure for 1998 Bonds

Chairperson Mutz called upon attorney Theodore J. Esping of the law firm of BAKER & DANIELS, who provided to the Board an overview and explanation of the need for Continuing Disclosure Undertaking Agreements with respect to the existing Fishers and Indianapolis economic development bonds.

Vice-chairperson Odle moved that Resolution No. 19, 2002, be approved and adopted by the Board. Mr. Curry seconded the motion, and a vote was taken. The Board unanimously approved and adopted the Resolution regarding "Approval by the Department of Waterworks of Continuing Disclosure Undertaking Agreement with Respect to Town of Fishers Economic Development Water Facilities Refunding Revenue Bonds, Series 1998 (Indianapolis Water Company Project) and Continuing Disclosure Undertaking Agreement with Respect to the City of Indianapolis economic Development Water Facilities Refunding Revenue Bonds, Series 1998 (Indianapolis water Company Project)."

VIII. Update on Closing

Chairperson Mutz called upon Regina M. Sharrow for an update on the scheduled closing of the City's purchase of the waterworks business of the IWCR. Ms. Sharrow advised the Board that the processes were on schedule for the closing date of April 30, 2002, including the successful negotiations of the Asset Purchase Agreement and the Operating Agreement with U. S. Filter, the regulatory approvals having been received, and other legal considerations having been addressed, such that the Department and U. S. Filter will be able to assume the duties and responsibilities of owning and operation the utility on and after May 1, 2002.

IX. Public Hearing on Re-adoption of Rate Resolution

Chairperson Mutz called to order the Public Hearing on the Readoption of the Rate Resolution, and called upon Regina M. Sharrow for an explanation of the need for Resolution No. 20, 2002. Ms. Sharrow advised the Board that certain rates previously approved in Rate Resolution No. 9, 2002, should be lowered based upon the advice of the City's financial advisor, and in order to comply with the Indiana Utility Regulatory Commission's Final Order of March 28, 2002.

Chairperson Mutz called on members of the public to comment; however, no comments from members of the public were forthcoming. Further, attorney Thomas K. Downs of the law firm of ICE MILLER DONADIO & RYAN advised the Board that the Resolution constitutes an amendment to Rate Resolution No. 9, 2002, and was not a readoption of that prior Resolution.

Mr. Curry moved that Resolution No. 20, 2002, be approved and adopted by the Board. Vice-chairperson Odle seconded the motion, and a vote was taken. The Board unanimously approved and adopted the Resolution, "Amendment to Rate Resolution No. 9, 2002."

X. Assignment of Asset Purchase Agreement from City to Department and Related Matters

Chairperson Mutz called upon Regina M. Sharrow for an explanation regarding Resolution No. 21, 2002, and Resolution No 22, 2002. Ms. Sharrow advised the Board of the reasons for the City's assignment of certain contract rights and obligations acquired by the City under the Asset Purchase Agreement. Such assignment would be made to the Department under the terms and subject to the conditions set forth in the Master Assignment and Assumption Agreement between the City and the Department, which has an effective date of April 29, 2002.

Ms. Sharrow further advised the Board of the reasons for the assignment of certain of the City's rights and obligations from IWCR and NiSource Inc. to the Department, with an effective date of April 30, 2002.

Chairperson Mutz raised the issue of title to certain Department assets being held in the name of the City rather than in the name of the Department. A Scott Chinn and Robert G. Elrod, counsel to the City-County Council, responded that this was a better legal practice, noting that the names of City departments were subject to change from time to time.

Vice-chairperson Odle moved that Resolution No. 21, 2002, be approved and adopted by the Board. Mr. Kimbell seconded the motion, and a vote was taken. The Board unanimously approved and adopted the "Resolution Regarding the Assignment of the Asset Purchase Agreement from the City to the Department."

Mr. Kimble moved that Resolution No. 22, 2002, be approved and adopted by the Board. Vice-chairperson Odle seconded the motion, and a vote was taken. The Board unanimously approved and adopted the "Resolution Regarding the Assignment from IWCR to the Department."

XI. Adoption of Contract Compliance Plan and Resolution Regarding Retention of Professional Services

Chairperson Mutz called upon Katherine L. Davis, Indianapolis City Controller, to provide to the Board a description and explanation of the City's blueprint for managing the Operating Agreement with U. S. Filter, and for securing certain professional services. With reference to the chart (Attachment A to Resolution No. 23, 2002), Ms. Davis and A. Scott Chinn advised the Board of the City's determination that three and one-half (3½) employment positions would be necessary to oversee the daily operations of the management contract, and the day-to-day operations of the Department and the Board, including a Contract Manager, an In-house Accountant, an In-house Project Manager, and an In-house Legal Counsel.

Ms. Davis and Mr. Chinn answered questions from Board members, and further advised that the Resolution would authorize the Controller or the Corporation Counsel, upon the advice and consent of the officers of the Board, to enter into professional service agreements for the benefit of the Department, and as are necessary and appropriate.

XII. Adoption of Department of Waterworks Budget.

Chairperson Mutz called upon Katherine L. Davis for an explanation of the proposed Department budget for the balance of 2002. Ms. Davis, and Deputy Controllers Chuck White and Bart Brown, advised the Board with respect to the budget and answered various question from Board members, noting that the budget and financial transactions thereunder were subject to independent audit

Ms. Davis noted that Character 030 of the proposed budget omitted the projected sum of One Hundred Thousand Dollars (\$100,000.00) for the waterworks advisory boards of other participating jurisdictions, and professional services they may require in connection therewith.

Further, Ms. Davis stated that the Department's revenue projection for the final eight (8) months of 2002 in gross receipts was Seventy Million and Four Hundred Thousand Dollars (\$70,400,000.00), and that it is the intention of the Controller to provide the Board a monthly report of the Department's cash revenues and expenditures, and quarterly to provide the Board a full financial report on an accrual basis.

Vice-chairperson Odle moved that Resolution No. 23, 2002, be approved and adopted by the Board. Mr. Kimbell seconded the motion, and a vote was taken. The Board unanimously approved and adopted the "Resolution Approving and Adopting the Contract Management Plan, and Authorizing the Controller or Corporation Counsel to Secure Certain Professional Services."

Mr. Curry moved that the Waterworks Budget, as presented to the Board, be amended by the Board by the addition of One Hundred Thousand Dollars (\$100,000.00) to Character 030 (Other Services and Charges). Vice-chairperson Odle seconded the motion, and a vote was taken. The Board unanimously approved and adopted the amendment to the Waterworks Budget, as presented to the Board.

Mr. Curry moved that the Waterworks Budget, as amended, be approved and adopted by the Board. Mr. Kimbell seconded the motion, and a vote was taken. The Board unanimously approved and adopted the Waterworks Budget, as presented to and amended by the Board.

XIII. Approval of Transition Capital Project Plan and Form of Notice to Proceed

Chairperson Mutz called upon Bill Rosenbaum and Dick Hurney of U. S. Filter, and Bob Miller of IWCR, to advise the Board with respect to the manner in which current capital projects would be addressed. Mr. Rosenbaum stated that it was the objective of U.S. Filter to ensure continuity of operations of IWRC through the transition period as to capital projects in process, those which are committed upon, and those which may be recommended to go forward within the next two or three months. Mr. Miller noted that thirteen (13) projects account for more than Nineteen Million Dollars (\$19,000,000) in anticipated costs, and Mr. Kimbell noted that Six Million, Seven Hundred Thousand Dollars (\$6,700,000) were the anticipated costs of extending mains into two neighborhoods where the Health and Hospital Corporation had determined that private wells must be abandoned.

A. Scott Chinn advised the Board that it has the authority to cancel or modify ongoing capital projects, and suggested that the Board may wish to establish protocols for the exercise of such authority with respect to ongoing projects and for authorizing U. S. Filter to proceed in cases of need, in lieu of waiting for the Board to meet. Mr. Hudson and Mr. Rosenbaum discussed the role of the Project Manager in this regard, the protocol for emergency capital appropriation, and the prospect of a one-year execution plan and five-year outlook plan under the Management Contract.

In response to a question from Mr. Odle, Mr. Rosenbaum and Mr. Hurney stated that it is their expectation that even the smaller capital projects would have to be approved by the Board or someone delegated by the Board to make that decision. Mr. Chinn noted that under the

Management Contract, the Board has the authority to have some projects withheld from U. S. Filter.

Chairperson Mutz thanked the U. S. Filter and IWCR representatives for their efforts and their report.

XIV. Approval of Developer and Neighborhood Agreements

Chairperson Mutz called upon Regina M. Sharrow to advise the Board as to other projects the IWCR was in the process of negotiating, or which were ready to sign. Ms. Sharrow and an official of the IWCR explained that there are two forms of agreement for water main extensions, one for new mains in neighborhoods currently on private wells, and one for development communities which upon completion would be turned over to the IWCR.

Ms. Sharrow stated that the Resolution before the Board sought the Board's approval of new forms of these two agreements, as amended by U. S. Filter, and the authorization of the Board's Secretary-Treasurer to execute the agreements with approximately two hundred (200) persons listed on Exhibit C. In response to a question from Mr. Kimbell, Ms. Sharrow stated that the new forms of agreement were not substantially different from the old forms.

Mr. Kimbell moved that Resolution No. 24, 2002, be approved and adopted by the Board. Mr. Bayt seconded the motion, and a vote was taken. The Board unanimously approved and adopted the "Resolution Approving and Adopting the Form of Developer and Neighborhood Job Contracts with the Listed Parties, and Authorizing the Officers of the Board to Execute Such Contracts."

XV. Proposal for Naming Waterworks

Chairperson Mutz called upon A. Scott Chinn to advise the Board as to this Resolution. Mr. Chinn stated that as part of the Asset Purchase Agreement, the City acquired the right to the name "Indianapolis Water Company," but it was unlikely the Department would wish to go forward with that name for a number of reasons, including the connotation that a "company" operates on a for-profit basis.

Mr. Steve Campbell, the Mayor's Director of Communications, offered examples of various names and logos to the Board, commenting on the benefits of each.

Mr. Curry moved that Resolution No. 25, 2002, be approved and adopted by the Board. The motion was seconded, and a vote was taken. The Board unanimously approved and adopted the Resolution regarding "The Establishment of a Committee Relative to the Replacement of the Name 'Indianapolis Water Company'."

XVI. Other Business and Adjournment

Mr. Curry raised the issue of whether there was any required Board action or response to two deliverables – a quality assurance plan and an emergency plan – due from U. S. Filter on May 1,

2002. A. Scott Chinn responded that the plans would be reviewed, and a memorandum would be provided to the Board as to what responses are necessary or advisable.

No date was set for the next meeting of the Board.

Jim Merten applauded the efforts of the Controller's Office, the Corporation Counsel's Office, Robert Clifford, and others with respect to financing. Chairperson Mutz noted the extraordinary efforts and commented on their bipartisan nature, referring to the cooperation he received from Mayor Bart Peterson, Dr. Beurt SerVaas, and Rozelle Boyd. Chairperson Mutz suggested that such efforts perhaps should be recognized in a resolution.

There being no other business before the Board, the Board concluded the meeting at 7:55 p.m.

Approved this _____ day of _____, 2002.

John Mutz,
Chairperson

Attest:

S. Michael Hudson,
Secretary-Treasurer